

Gross receipts from proceeds from the sale of personal property, including food, purchased through fundraising events for the benefit of a public or private elementary or secondary school, a group of those schools, or one or more school districts if the events are sponsored by an entity recognized by the school district that consists primarily of volunteers and includes parents and teachers of the school children are exempt from Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.120. (This is a PLR).

October 2, 2000

Dear Mr. Xxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter dated August 16, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to BUSINESS for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither BUSINESS nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of the BUSINESS operating at the separate schools in District #, we hereby request a Private Letter Ruling pursuant to 2 Ill. Adm. Code 1200.110, regarding the applicability of the Illinois Retail Occupation Tax ('ROT') and/or the Illinois Use Tax ('Use Tax') to the transactions described herein. When necessary, reference has been made to the requirements of 2 Ill. Adm. Code 1200.100(4)(b)(1)-(8). (A Form IL-2848 'Power of Attorney' designating the undersigned as entitled to submit this ruling request on behalf of BUSINESS is attached hereto as Exhibit 1.)

### **The Requested Ruling**

The BUSINESS request a Private Letter Ruling that the BUSINESS are entitled to administer a weekly hot lunch program to District # students during the school year without incurring ROT liability. See IDOR Regulation, Sections 130.2005(a)(3) and (b)(4)(A).

### **Statement of Facts**

The BUSINESS is a not-for-profit association organized and existing under the laws of the State of Illinois. BUSINESS is organized exclusively for charitable and educational purposes within the meaning of Section 503(c) of the Internal Revenue Code and IDOR

Regulation, Section 130.2005(a)(1)(D). (A copy of the xxxx District # BUSINESS Articles of Association and Bylaws' is attached hereto as Exhibit 2.)

The BUSINESS operating at the schools in District # are not separate legal entities, but are operated as divisions of BUSINESS. (A copy of the 'XXXX Policies and Procedures,' including Committee Descriptions – illustrative of the organizational documents of the individual BUSINESS – is attached hereto as Exhibit 3). The local BUSINESS do not have separate tax I.D. numbers, separate not-for-profit exemption numbers under Section 103.2007, or separate state reseller's certificates, and operate under the designations granted to BUSINESS. The local BUSINESS have separate officers who manage their respective BUSINESS under the auspices of BUSINESS. While local BUSINESS maintain separate bank accounts (all under the BUSINESS tax and not-for-profit designations), all state and federal tax matters and annual auditing functions are performed at the BUSINESS level.

The mission of BUSINESS is to promote cooperation, understanding, and communication between school and home and to facilitate District-wide activities in furthermore of the educational process. All parents and/or guardians of children enrolled in District # schools as well as current District employees are eligible for membership in BUSINESS. Membership is maintained at the local BUSINESS level. Thus, both BUSINESS operating at the individual schools are composed of volunteers -- parents, guardians, teachers, and other school personnel -- who generously donate their time and talents to help students and to facilitate the educational process in XXXX's schools.

One of the primary functions of the local BUSINESS is fundraising. Funds raised by the local BUSINESS are used to purchase computers, audio-visual equipment, teacher supplies, demonstrative aids, books and a wide variety of items that benefit the schools and the educational process. Funds raised by the individual divisions are invested back into the schools and serve to offset taxes that otherwise would be needed to acquire the same materials and services for the schools.

### **Analysis**

An important program run by the local BUSINESS is the Hot Lunch Program which provides hot meals for District # students generally every Friday between October and May. Members of the Hot Lunch committee decide on the menu, organize volunteers to serve the food, collect the order forms and money from the teachers, and order the food itself. The program's value is augmented by the fact CITY elementary schools generally do not have the kitchen facilities needed to produce hot lunches for their students. Thus, the program serves the dual function of offering students a hot meal once a week while obviating the need for the enormous capital expenditures that would otherwise be required to outfit the various schools with adequate kitchen facilities.

Department regulations currently allow schools to operate cafeteria or dining facilities on the school's premises that confine food sales to the students and employees of the

school without incurring ROT liability. See IDOR Regulation, Section 130.2005(b)(4)(A). The undersigned requests a Private Letter Ruling that would enable each of the BUSINESS operating at the separate schools in NAME C.U.S.D. # to engage in and administer the Weekly Hot Lunch Program without incurring ROT liability. The local BUSINESS hot lunch sales occur on the school's premises and the sales are confined to students and employees. The local BUSINESS, thus, request the same exempt treatment afforded to the schools themselves for providing identical hot lunch service to students and school employees. Additionally, because the schools are not equipped to provide hot meals for students, granting an exemption allows the local BUSINESS to provide what the schools cannot while simultaneously raising funds for the schools. Granting the exemption would also facilitate the administration of the Hot Lunch Program as it is staffed entirely by volunteers with varying degrees of accounting and tax experience. The burden of organizing and running the program would be intolerable if an exemption were denied.

The local BUSINESS should also be allowed to conduct the Hot Lunch Program without incurring ROT liability due to the Sales to Members exemption set forth in the applicable regulations. See IDOR Regulation, Section 130.2005 (a)(2)(A). The Regulation creates an exemption for sales made to an 'organization's members, or to its students in the case of a school.' Examples include sales of uniforms by Scout organizations or the sale of Bibles to church members. See IDOR Regulation, Section 130.2005(a)(2)(B). The Regulation specifically excludes exemption for sales of school books and school supplies to students, but the Regulation does not, for obvious reasons, implicate the Hot Lunch Program. See IDOR Regulation, section 130.2005(a)(2)(C).

Finally, Department regulations allow a ROT exemption in regards to noncompetitive sales. See IDOR Regulation, Section 130.2005(a)(3). The weekly hot lunch sales are administered by local BUSINESS members and the net proceeds are returned to the school thereby satisfying several requirements of a noncompetitive sale. Additionally, the Weekly Hot Lunch Program does not compete with local business establishments. An elementary school student does not have the option to leave school premises to patronize local restaurants during lunchtime. By the local BUSINESS serving hot meals to the students, no business is lost from local establishments that otherwise would have been received but for the local BUSINESS providing the service. Therefore, the noncompetitive sale exception is applicable.

To the best of the knowledge of BUSINESS, the local BUSINESS, and the undersigned, the Department has not previously ruled on the same or a similar issue for the taxpayer or any predecessor and neither the taxpayer nor any representative has ever previously submitted the same or similar issue to the Department at any time, including any such request that may have been withdrawn prior to the issuance of a letter ruling. Besides the authorities listed above, we are aware of no other supporting or contrary relevant authorities within the meaning of 2 Ill. Admin. Code 1200.110(b)(5) & (6).

No audit or litigation is currently pending with the Department. No trade secret or other information need be deleted from the publicly disseminated version of the private letter ruling.

### **Conclusion**

We respectfully request the Department issue a Private Letter Ruling that the local BUSINESS within the CITY BUSINESS are entitled to offer weekly hot meals to students and staff during the school year without incurring ROT liability within the meaning of IDOR Regulation, Section 130.2005(b)(4)(A), (a)(2) & (3).

If you have a contrary view, we would request the opportunity to discuss the matter with you further. Thank you for your assistance in this matter. If you have any questions or need additional information, please contact me at #####.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

Organizations that have E numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability.

A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened up for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable. See Section 130.2005(b)(4)(A). The Supreme Court has said that a school is a place where systematic instruction in useful branches of learning is given by methods common to schools and institutions of learning. Based upon the BUSINESS Articles of Association and Bylaws (Exhibit 2), the BUSINESS Association ("Association") is an organization whose primary purpose is "to promote close cooperation, understanding and communication between the school and the home." The Association is not a school, and therefore, is unable to make tax-free sales under Section 130.2005(b)(4).

With regard to sales made to an exempt organization's members, the Association's Articles of Association and Bylaws (Exhibit 2) provide that "all parents and/or guardians of District # students, and current district employees are eligible to be members of the Association." According to your

letter, the Hot Lunch Program "serves the...function of offering students a hot meal once a week." However, the students are not members of the Association. Therefore, the Association is unable to make tax-free sales of hot meals under Section 130.2005(a)(2).

With regard to noncompetitive sales, the selling of food by the Association to students is in direct competition with local retailers. Even though your letter indicates that an elementary school student does not have the option to leave school premises to patronize local restaurants during lunchtime, such provision of food sales directly competes with other retailers, such as caterers or vending machine operators, who may also be able to provide food services to the students at the schools. Also, according to your letter, the Hot Lunch Program provides "hot meals for District # students generally every Friday between October and May." Such sales are performed on a continuing basis and the transfer of the meals is not merely incidental and secondary to the dominant purpose of making a gift to the Association. As such, the Association is unable to engage in such selling activity without incurring Retailers' Occupation Tax under Section 130.2005(a)(3).

Under the provisions of Section 2-5(33) of the Retailers' Occupation Tax Act, gross receipts from proceeds from the sale of personal property, including food, purchased through fundraising events for the benefit of a public or private elementary or secondary school, a group of those schools, or one or more school districts if the events are sponsored by an entity recognized by the school district that consists primarily of volunteers and includes parents and teachers of the school children are exempt from Retailers' Occupation Tax. However, this exemption does not apply to fundraising events (i) for the benefit of private home instruction or (ii) for which the fundraising entity purchases the personal property sold at the events from another individual or entity that sold the property for the purpose of resale by the fundraising entity and that profits from the sale to the fundraising entity. 35 ILCS 120/2-5(33) (1998 State Bar Edition); see also 86 Ill. Adm. Code 130.120 and the Department's proposed regulation, 86 Ill. Adm. Code 130.2009, published at 24 Ill. Reg. 7470, Issue #21, 5/19/00 (currently being prepared for adoption).

In order for the exemption under Section 2-5(33) of the Retailers' Occupation Tax Act to apply, the following requirements must be met. First, the fundraising event must be for the benefit of the school. It appears that the Hot Lunch Program benefits the school in which it is held. Second, the fundraising event must be sponsored by an entity recognized by the school district. Assuming that the Hot Lunch Program, which is sponsored by the Association, is recognized by the school district in the form of a written approval to sell hot lunches for the purpose of benefiting the school, a group of schools, or school districts, this requirement is met. Finally, the entity sponsoring the fundraising event must be comprised primarily of volunteers, including parents and teachers of the school children. Your letter states, in part, that both BUSINESS and the local BUSINESS operating at the individual schools are composed of volunteers--parents, guardians, teachers, and other school personnel. As such, this requirement is satisfied.

As stated above, the exemption under Section 2-5(33) of the Retailers' Occupation Tax Act does not apply to situations in which the fundraising group purchases items that it will in turn sell from a supplier who sells the items to the fundraising group for the purpose of resale and profits from the sale to the fundraising group. For example, if a parent-teacher association contracts with a caterer for a fundraising dinner, sales of the dinner cannot be made tax-free. In this case, the parent-teacher association has purchased ready-made items from a caterer for purposes of resale, and the caterer

has profited from the sale. However, a fundraising group may engage in tax-free selling when it sells items that it has prepared or that are donated to it. Proceeds from bake sales or bazaars of a fundraising group selling items that are prepared by or donated to the fundraising group are exempt from tax.

Your letter states that "[m]embers of the Hot Lunch committee decide on the menu, organize volunteers to serve the food, collect the order forms and money from the teachers, and order the food itself." Assuming that the Association purchases the food items and prepares the hot lunches for the students, the exemption is applicable. On the other hand, if the Association contracts with a caterer for the hot lunches for the students, the exemption is inapplicable. If the exemption is applicable, the Association may use its exemption identification number to purchase the food items tax-free from the food vendor. If, however, the Association does not have an exemption identification number, it would be required to pay tax to the food vendor or provide the food vendor with a Certificate of Resale. See 86 Ill. Adm. Code 130.1405, enclosed. Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are for resale, or that a particular sale is a sale for resale.

In conclusion, since the Association meets the first and last requirements, and assuming that the Association is able to meet the second requirement, for the exemption set forth under Section 2-5(33) of the Retailers' Occupation Tax Act, the Association may make sales of hot lunches through the Hot Lunch Program without incurring Retailers' Occupation Tax on such sales if the Association purchases the food items and prepares the hot lunches for the students. However, if the Association contracts with a caterer for the hot lunches for the students, the exemption is inapplicable.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Gina Roccaforte  
Associate Counsel

GR:mzk  
Enc.